

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JAMES PERKINS,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. DISM-01-0027

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the Attorney General's Office, West 1116 Riverside Avenue, Spokane, Washington, on February 28 and March 1, 2002. GERALD L. MORGEN, Vice Chair, reviewed the record in the matter and participated in the decision in this matter.

1.2 **Appearances.** Appellant James Perkins was present and was represented by Christopher Coker, Attorney at Law, of Parr and Younglove, P.L.L.C. Patricia A. Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant

1 failed to report the use of a locked metal cage-like structure for isolation and/or timeout for a  
2 developmentally disabled consumer.

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.  
6 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,  
7 PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

## 10 II. FINDINGS OF FACT

11 2.1 Appellant James Perkins was a Developmental Disabilities Case Manager and permanent  
12 employee for Respondent Department of Social and Health Services. Appellant and Respondent are  
13 subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358  
14 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 30, 2001.

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16 2.2 By letter dated February 15, 2001, Mr. Laurie Zapf, Regional Administrator, informed  
17 Appellant of his dismissal effective March 2, 2001. Mr. Zapf charged Appellant with neglect of  
18 duty, gross misconduct and willful violation of published employing agency rules and regulations.  
19 Mr. Zapf specifically alleged that Appellant failed to report the use of a locked metal "cage-like"  
20 structure for isolation and/or timeout for consumer Bud B, a developmentally disabled individual.

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22 2.3 Appellant was the Outstation Manager for the Division of Development Disabilities office in  
23 Colville, Washington. Appellant was a leadworker responsible for providing services to  
24 developmentally disabled individuals. Appellant's duties included determining eligibility and  
25 approving services, managing medically intensive services, and providing family support services.  
26 Appellant also prepared Comprehensive Assessments and Individual Service Plans for individuals

1 on his caseload. Appellant performed his work independently and with little supervision. He was  
2 an employee of the department for approximately 10 years.

3  
4 2.4 Client Bud B. was assigned to Appellant's caseload. Bud is autistic and he exhibits  
5 uncontrolled outbursts. In the past, Bud caused extensive damage to his home. Bud broke through  
6 glass windows, punched holes through walls, pulled electrical wiring and he liked to run away.  
7 Bud's episodes of uncontrollable behavior could result in injuries to him and/or others. As a result  
8 of Bud's behavior, his Individual Service Plan approved by Appellant in 1995 authorized the use of  
9 a separate timeout room as a form of deescalating his outbursts.

10  
11 2.5 Bud's uncontrollable physical outbursts eventually created so much damage to his bedroom  
12 that it was no longer adequate to house him. In August 1999, Bud's mother, Ms. B. contacted  
13 Appellant because she could no longer contain Bud and she wanted to find a way to keep Bud safe.  
14 Ms. B's husband had made a diagram of a structure made out of flexible metal. Ms. B hoped the  
15 structure, which she called a safe room, would protect Bud and others from his violent outbursts,  
16 control his behavior, and help to make him feel safe during his outbursts.

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18 2.6 Appellant denies that he knew of the structure prior to its construction, that he spoke to Ms.  
19 B about its construction or that he viewed and authorized its use. We have reviewed the testimony  
20 of Appellant, Ms. B and her husband, and Marion Anderson-Skeen, Bud's home care services  
21 provider. We find the testimony of Ms. B, her husband and Ms. Anderson-Skeen more credible,  
22 because they have been consistent in their retelling of the events, and they have no motive to  
23 fabricate the allegations against Appellant. Therefore, we make the following findings.

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25 2.7 Ms. B discussed the metal structure with Appellant who told her that there were no material  
26 and/or dimension restrictions. Ms. B proceeded to have the structure built by a friend.

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2 2.8 On October 23, 1999, Appellant and Eric Clark, a Case Resources Manager trainee, went to  
3 the home of Bud B. Present at the home were Bud's mother, father, and Ms. Anderson-Skeen.  
4 During the visit, Appellant and Bud's mother discussed the metal structure, which was housed  
5 within Bud's bedroom. Appellant examined the metal structure, checked its strength and advised  
6 Bud's mother to file down a sharp metal point. Appellant told Bud's mother that the structure was  
7 appropriate to meet Bud's special needs. Following Appellant's approval, Ms. B and Bud's home  
8 care providers began to utilize the structure to contain Bud when he engaged in dangerous outbursts  
9 of uncontrollable behavior.  
10

11 2.9 In mid March 2000, an anonymous caller informed Child Protective Services (CPS) that a  
12 "metal fabricated cage" with padlock was being used to restrain Bud B. CPS initiated an  
13 investigation and Paul Thurik went to Bud's home and spoke with Ms. B. During the visit, Ms. B.  
14 acknowledged that she used the structure to contain Bud and that Appellant and Mr. Clark had seen  
15 and approved its use. During subsequent interviews with Ms. Thurik, both Appellant and Mr. Clark  
16 denied having any knowledge of the structure.  
17

18 2.10 On March 30, 2000, Regional Administrator Laurie Zapf requested that the Washington  
19 State Patrol (WSP) Conduct a criminal investigation or administrative review.  
20

21 2.11 During an interview with the Washington State Patrol, Appellant stated that he did not recall  
22 "seeing or viewing a metal cage-like structure used to restrain or control [Bud B] ..." and that he  
23 did not recall Ms. B "informing me that a cage-like structure was being used as a safe room or lock  
24 room to secure [Bud B]."  
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26

1 2.12 The Division of Developmental Disability has adopted Policy 12.01 that outlines the  
2 guidelines for timely reporting of serious and emergent incidents. The policy requires that  
3 suspected abuse, neglect or mistreatment be immediately reported. A serious and emergent event  
4 includes “any other unusual, unexpected, suspicious, or atypical event or situation of a special  
5 concern to DDD or other administrative areas within DSHS.” Appellant acknowledged his  
6 awareness of this policy.

7  
8 2.13 Mr. Zapf was Appellant’s appointing authority. Prior to determining whether misconduct  
9 occurred, Mr. Zapf reviewed the WSP report and he spoke to other individuals who were in the  
10 home on October 23, 1999. In addition, Mr. Zapf interviewed Appellant. Mr. Zapf ultimately  
11 concluded that there was no apparent motive for anyone to conspire against Appellant and he did  
12 not find Appellant’s denials credible. Mr. Zapf concluded that Appellant went to Bud’s home,  
13 viewed the “cage” and approved its use. Mr. Zapf determined that Appellant willfully violated  
14 Policy 12.01 when he failed to report the use of a metal “cage” structure to anyone within his chain  
15 of command. Mr. Zapf considered the structure an unsafe environment for Bud and contrary to the  
16 department’s responsibility to keep him safe from harm. Mr. Zapf concluded Appellant’s failure to  
17 report the structure created a potential risk for a DDD client and that it was in the best interest of all  
18 agency consumers to permanently remove Appellant from his position, which functioned  
19 independently with little onsite supervision or monitoring.

### 20 21 **III. ARGUMENTS OF THE PARTIES**

22 3.1 Respondent argues that the evidence supports that Appellant was aware of and approved the  
23 use of the “metal cage like structure” to control Bud’s destructive behavior. Respondent argues that  
24 the credible testimony established that Appellant discussed the construction and building of the  
25 metal structure and later approved its use as “necessary and appropriate.” Respondent argues that  
26 Appellant failed to take accountability for his actions. Respondent argues that Appellant was

1 disciplined for his failure to report the metal structure intended for timeout purposes, which violated  
2 Policy 12.01. Respondent further argues that Appellant's misconduct was extremely serious and  
3 that dismissal was the only appropriate sanction.

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5 3.2 Appellant denies that he ever discussed or approved the use of the metal structure.  
6 Appellant argues that Ms. B had a motive to assert that the Division of Developmental Disabilities  
7 knew about the metal "cage," and he further asserts that neither Ms. Anderson-Skeen nor Ms. B's  
8 husband provided credible testimony to support that he approved the structure. Appellant argues  
9 that there is no evidence he knew about the structure or that he approved its use and he asks that his  
10 appeal be granted.

#### 11 12 IV. CONCLUSIONS OF LAW

13 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
14 herein.

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16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
17 the charges upon which the action was initiated by proving by a preponderance of the credible  
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
20 Corrections, PAB No. D82-084 (1983).

21  
22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
24 of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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4 4.5 Willful violation of published employing agency or institution or Personnel Resources  
5 Board rules or regulations is established by facts showing the existence and publication of the rules  
6 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
7 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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9 4.6 The mission of the Department of Social and Health Services, through DDD, is to ensure  
10 that individuals with developmental disabilities receive the best possible care and services in order  
11 to ensure they live safe, healthy and secure lives. Appellant had a responsibility to advocate for and  
12 protect Bud B. Respondent has met its burden by proving by a preponderance of the credible  
13 evidence that Appellant failed to report the use of the metal structure used to contain Bud during his  
14 uncontrollable behavior episodes and that he approved the use of the structure. The use of the  
15 locked metal structure created an unusual situation that created a special concern for the agency and  
16 should have been reported according to Policy 12.01. Therefore, Appellant, a 10-year employee  
17 with DDD, should have known of his duty to report and document the use of the unusual metal  
18 isolation structure. His failure to do so was a neglect of his duty as a Developmental Disabilities  
19 Outstation Manager, a willful violation of Policy 12.01 and rises to the level of gross misconduct.

20  
21 4.7 In determining whether a sanction imposed is appropriate, consideration must be given to  
22 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
23 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
24 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
25 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1 4.8 Under the facts and circumstances presented here, we cannot conclude that dismissing  
2 Appellant from his position as a Developmental Disabilities Outstation Manager was too severe.  
3 Therefore, the appeal of James Perkins should be denied.  
4

5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of James Perkins is denied.  
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8 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.  
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10 WASHINGTON STATE PERSONNEL APPEALS BOARD  
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13 Walter T. Hubbard, Chair  
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16 Gerald L. Morgen, Vice Chair  
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